

EXHIBIT 1 (A)

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1 Dairy Fresh, Farmers Ranch and Health,
2 because this guy had called and left his
3 number, and he's -- he could see from my
4 resume where I had sold insurance.

5 Q. Yes.

6 A. But because of this situation,
7 my insurance, I've lost my insurance
8 license, and I told -- you know, I spoke
9 to him, and I told him I can't do that
10 now. I'd have to go back and retest and
11 everything.

12 And then this is the meeting
13 that I went to on the 12th. And I don't
14 know -- okay. This is -- well, this was
15 DHL.

16 Q. So, this was the meeting you
17 went to in connection with getting a job
18 at DHL?

19 A. Yeah, I assume it is.

20 Q. Okay. By the way, I looked
21 further at the W-2, the best I could read
22 it. It looks like you might have been
23 working for one of the contractors for

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1 Ozark. Ozark was a franchisor of or
2 franchisee of --

3 A. DHL.

4 MR. NELMS: -- DHL.

5 MR. SPOTSWOOD: We've got
6 three or four pages on this one, and we
7 might want to make a quick copy of this
8 so you can follow along with me.

9 (Off-the-record discussion.)

10 (Whereupon, Defendant's
11 Exhibit W was marked for
12 identification.)

13 Q. (BY MR. SPOTSWOOD:) I'm
14 looking at Exhibit W, Mr. Thornton, which
15 is four pages of handwritten notes, I
16 think, that are in your handwriting,
17 correct?

18 A. Yes, sir.

19 Q. Okay. At the top of the first
20 page, can you tell me what that's about,
21 that reference to Curtis and just copay?

22 A. Yes, that was an individual at
23 Mega Life and Health where I put an

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1 DHL rather than for DHL?

2 A. They are contractors.

3 Q. Okay. So, they have a similar
4 situation to FedEx, their drivers are
5 independent contractors, and then those
6 contractors can hire employees to work
7 for them?

8 A. No, sir. It's -- it's
9 different from that. What it is --

10 Q. Well, who were you working for
11 is what I'm asking you?

12 A. Well, I was working -- I guess
13 you would say it's Ozark Delivery. He's
14 a franchise. The guy -- an individual
15 purchases a franchise, and that's the way
16 DHL works, and then they work under the
17 DHL umbrella. Everything is labeled DHL.
18 It was actually Ozark Delivery Service or
19 something like that. But it's not like a
20 driver. He was not a driver.

21 Q. I understand. All right.

22 MR. NELMS: Just so I
23 understand. SO, you were an employee of

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1 inquiry in as far as receiving health
2 insurance through Mega Life. That was
3 the individual I contacted. And it says
4 tonight or Friday. That was a time that
5 they had available that they could come
6 set -- visit with me and the wife as far
7 as doing the insurance.

8 Q. Okay. That was a health
9 insurance policy that you were going
10 to --

11 A. We took it out.

12 Q. -- consider or took out?

13 A. Yes, that's right.

14 Q. All right. What's the next
15 sentence?

16 A. Willie Durham?

17 Q. Yes.

18 A. Willie -- Willie Durham is the
19 agent that my wife actually works for who
20 owns the State Farm franchise.

21 Q. Yes.

22 A. He had called me on that day
23 to offer me the job as far as an agent

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1 working for him. Well, at that time I
2 had bigger and brighter plans, and that's
3 when I recommended my wife to him.

4 **Q.** Okay. And then underneath
5 here we have Alfa, bi-monthly and then
6 have some --

7 **A.** That's just basically
8 information from Alfa on health
9 insurance.

10 **Q.** And then the next entry here?

11 **A.** That was my van number. It
12 says Workhorse truck. And that was the
13 cost of the Workhorse van, and 72 months
14 down payment or down, and I don't know
15 what those figures are. But, anyway, it
16 figures up to be what the -- I was going
17 to be paying per month and all that good
18 stuff.

19 **Q.** All right. And then I see
20 some figures on the bottom here about Tim
21 Edmunds and contractor relations. This
22 is -- this was, I take it, late in the
23 game when you were in the process of

1 this conversation with Richard Gene,
2 correct?

3 **A.** I assume that I -- I know I
4 recorded a conversation with Mr. Gene.

5 **Q.** From the looks of the
6 transcript, you left a message. I'm
7 looking at Exhibit R. It looks like you
8 left a message for him, and then he
9 called you back, and your actual phone
10 call with Mr. Gene is found on page 45 of
11 that transcript. I'm sorry. 41 -- no,
12 45. That's correct.

13 **A.** (Examining document.)

14 **Q.** Does that look right?

15 **A.** Yes, sir.

16 **Q.** And then your note here, it
17 says talk to on 5/18/05, so would it
18 be -- would that help us figure out that
19 this conversation that was recorded
20 happened on 5/18/05?

21 **A.** Yes, sir. That's my
22 handwriting. I put that down.

23 **Q.** All right. And you don't

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1 trying to figure out what your situation
2 was with the van, correct?

3 **A.** Well, it says talk to -- I
4 talked to him on 5/18. I -- yes. It was
5 around the 18th of May, and then he gave
6 me my -- that's when I got my -- the ID
7 number and my work area number.

8 **Q.** And as I recall, we're talking
9 about Richard Gene. It's written down
10 here. I don't know how -- which is the
11 correct spelling, but your conversation
12 with Richard Gene. You actually had more
13 than one was -- we have it as J-E-A-N,
14 and you have it here as G-E-N-E, correct?

15 **A.** Well, I may be -- I may be
16 wrong.

17 **Q.** I don't know which one of us
18 is correct on that.

19 **A.** I don't know.

20 MR. NELMS: You both may be
21 wrong.

22 **A.** That's true.

23 **Q.** And you would have recorded

1 recall, do you, any other conversation
2 other than the one conversation you had
3 with Mr. Gene or -- actually there's
4 another one reflected on the tape here.
5 It's Richard Gene 131. Let me see if you
6 actually spoke with him then. I saw -- I
7 do see in the transcript that you had a
8 relatively short conversation with him on
9 pages 131 and 133. This is the third
10 entry here -- and you do say these calls
11 were made on the 19th of May, so I take
12 it --

13 **A.** Well, this -- the particular
14 time I took these notes here, they were
15 made on the 18th.

16 **Q.** Right.

17 **A.** 5/18.

18 **Q.** And I think there was a long
19 conversation on one occasion?

20 **A.** Apparently so, yes, sir.

21 **Q.** And then you called him back?

22 **A.** Yes, sir.

23 **Q.** And -- or you left him a

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1 message, he or one of the two of you.
2 No, you reached him. Well, actually, no,
3 it looks like you left him a message.
4 That's what you did on that time.
5 So, maybe that was the only
6 occasion, according to those transcripts,
7 that you actually talked to Gene was that
8 one time. You left him two messages. Do
9 you have any recollection of talking to
10 him more than once personally?
11 A. No, sir, I don't. I know I
12 spoke to him -- I know I spoke to him. I
13 don't know --
14 Q. And this note reflects, then,
15 that would have been on the 18th of May?
16 A. Yes, sir.
17 Q. All right. Do you know what
18 work area is defined by these numbers on
19 this sheet, 112-069?
20 A. No, sir, I do not.
21 Q. And then the top of page two
22 of Exhibit W, we have referenced a truck,
23 668 -- truck insurance, 668. Was that

1 is listed as a phone call to Jeff White,
2 and you -- actually, it doesn't look like
3 you spoke to Jeff. You spoke to somebody
4 by the name of Cheryl and left a message
5 for Jeff.
6 A. You mean Exhibit O?
7 Q. Yes, just looking at the first
8 two pages of that.
9 A. Oh, yes. I see. I know you
10 said R. I was looking for R.
11 Q. Oh, yeah. Sorry about that.
12 A. Yes. That's correct. I
13 assume Cheryl was the office or someone.
14 Q. Do you recall speaking to Jeff
15 White?
16 A. Oh, sure, I spoke to Jeff
17 White maybe a couple of occasions.
18 Q. And what did you talk to Jeff
19 about?
20 A. I don't recall. I'd have to
21 go back to the transcripts to look in
22 there.
23 Q. I don't see any recorded

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1 how much your truck insurance was per
2 year?
3 A. I -- well, I'm not really
4 sure. It may be a -- it's possible. I'm
5 not really sure. I know it says truck
6 insurance \$668.
7 Q. Okay.
8 A. I'd have to look at the
9 policy.
10 Q. All right. And then I see
11 reference to your lawyers here. I know
12 who they are.
13 A. Yes.
14 Q. Who is Patrick Hale?
15 A. He was an attorney that
16 recommended Andy.
17 Q. And then down below that I see
18 Jeff White. Who is Jeff White?
19 A. That, I assume, is the -- he's
20 either an engineer with FedEx or Kent's
21 boss. I'm not really sure.
22 Q. And is that -- is -- the very
23 first conversation recorded on Exhibit R

1 conversations with Jeff White.
2 A. I know on one occasion I spoke
3 to Jeff. This was the Saturday -- I
4 don't recall the date, but the Saturday
5 of the week I was supposed to start work
6 and because I was wanting to know what
7 was going on, and he said at that time he
8 was going into a meeting and he had all
9 of my paper -- all of my paperwork into
10 the meeting, and he would get back in
11 touch with me the following week. And I
12 never heard from him.
13 Q. And is that what prompted you
14 to call him on this occasion where you
15 recorded the effort to reach him?
16 A. It may be that -- possible
17 that that's it.
18 Q. Okay.
19 A. But I -- because I know before
20 I recorded these I had had conversations
21 with Jeff to find out what was going on.
22 Q. Okay.
23 A. Because I didn't know what to

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1 do. I didn't know what to do.

2 Q. And you have some notes down
3 here underneath the Jeff White phone
4 number on this Exhibit W, page two. Were
5 those the things that you were going to
6 tell him about if you reached him, is
7 that sort of your outline of topics?

8 A. It may have been. It may have
9 been. Or I know it was some things I put
10 down on paper pertaining to the
11 situation.

12 Q. And then below those we have
13 this note: "Spoke to Omar Newman on the
14 20th. Jim French, regional director."
15 Was that the 20th of May?

16 A. It would have been.

17 Q. And do I understand from this
18 that he told you to contact Jim French, a
19 regional director, or --

20 A. Yes.

21 Q. Did you do that?

22 A. I believe I tried. I'm -- I
23 really don't remember if I had a

1 A. Yes.

2 Q. -- would you have recorded the
3 fact that you called him and left him a
4 message?

5 A. I would have -- yes, I would
6 have. If I would have had a number, I
7 don't -- I don't -- Omar may have -- I
8 really don't think I had a number for
9 Jim. I think Omar was going to have him
10 call me, if I recall correctly. If I had
11 had a number for him and would have
12 called, I would have definitely have
13 recorded it because I may have got him on
14 the phone.

15 Q. All right. And then on the
16 top of the next page we have an address
17 1015 Seaton Court, Montgomery, 36116. Is
18 that Kent's home address?

19 A. It may be. I'm --

20 Q. I recall from the transcript
21 that you -- that you asked him what his
22 home address was.

23 A. Okay. Yes. I remember now.

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1 conversation with Jim or not.

2 Q. I don't see any transcript of
3 it. I'll say that.

4 A. Okay. But it's possible that
5 I left a message for him to call, and I
6 never heard from him.

7 Q. And these other transcripts do
8 reflect when you left messages, so I
9 guess you just didn't record that, if, in
10 fact, you called him?

11 A. If I would have heard from
12 him, I would have recorded it.

13 Q. All right. And would you have
14 recorded it if you had left him a message
15 on or after the time you started making
16 these conversations, recordings?

17 A. Ask that again.

18 Q. That was a pretty botched up
19 question.

20 A. Oh, that's fine.

21 Q. If you had called him on or
22 after the dates when you started making
23 these recordings --

1 Yes. Yes.

2 Q. Okay. So, this is what you
3 were writing down while you were on the
4 phone with him recording the
5 conversation?

6 A. Yes.

7 Q. Okay. And then underneath
8 that it says letter to Kent and then --
9 that's number one, and then two, Jeff. I
10 understand letter to Kent. What does
11 two, Jeff mean. Paren two, Jeff?

12 A. This was pertaining to my
13 truck payment.

14 Q. Okay.

15 A. I remember that. And --

16 Q. Jeff White then, is that who
17 you're referring to there?

18 A. Yes. Yes.

19 Q. And that was kind of the
20 action plan, you were going to write a
21 letter to Kent, and then you were also
22 going to get in touch with Jeff?

23 A. Well, I -- yes.

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1 Q. If you want to explain, I'm
2 interested in it.
3 A. No, I'll wait for a question.
4 Q. Okay. Then to the right it
5 says make a case, paren, write it out,
6 close paren, history and present. What
7 does that refer to?
8 A. That was some notes I was just
9 writing when I was -- after I talked to
10 Andy.
11 Q. Oh, okay. Then, underneath
12 that we have route given to -- I'm having
13 a little trouble reading this?
14 A. Yes.
15 Q. Could you decipher that for
16 me?
17 A. Yes. It says given -- says
18 route given to Tina. That's the
19 Montgomery route. That's 36116. Isaac,
20 which was training for Troy, he accepted
21 that. When I was there, he didn't know
22 if he was going to take it, and Kent
23 didn't know if he wanted him to have it.

1 A. No, sir, I don't.
2 Q. And then it says SS and
3 driver, or diver, rather?
4 A. I don't know. I don't -- I
5 don't recall.
6 Q. All right. And then the last
7 page here, can you explain those entries
8 for me?
9 A. No, sir, I really don't. It
10 was something that I just -- I wrote down
11 there to jog my memory pertaining to
12 something. I guess it took place on the
13 14th of April and had to do with a truck
14 and insurance. I don't know why I put
15 paid also on there, but anyway. I don't
16 recall.
17 Q. All right.
18 MR. NELMS: Let's break for a
19 minute.
20 MR. SPOTSWOOD: Absolutely.
21 (Said deposition was in recess
22 at 1:30 p.m. until 1:45 p.m.,
23 after which the following

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1 And then Wetumpka, the Elmore/Wetumpka
2 route that I was -- well, actually it was
3 given to Pettaway. I don't even remember
4 Pettaway's first name.
5 Q. Okay. And then the next thing
6 you have written down here is advertise
7 to sell truck?
8 A. Right. That was something
9 that Andy told me I needed to do, which I
10 understood that I had to start some type
11 of advertisement. How are you going to
12 sell a FedEx truck, though? But that was
13 just a note.
14 Q. And you wrote down two year
15 contract?
16 A. Right. That was pertaining to
17 the conversation with Kent.
18 Q. All right. And then we've got
19 a one -- I can't tell if --
20 A. 1-800 or -- I don't know what
21 that number is.
22 Q. All right. Do you know who it
23 is or --

1 occurred:)
2 Q. (BY MR. SPOTSWOOD:) What
3 specifically did Mr. Trott say at your
4 information session about a route, if you
5 can remember, apart from what's written
6 on your notes that we've already talked
7 about?
8 A. Well, that -- that was -- that
9 was my biggest concern, and after the
10 meeting -- after the meeting, we actually
11 met with Stan in the lobby, my wife and
12 I, and we asked him more questions. And
13 he specifically said that they -- being
14 specific as far as what he was telling
15 us, that there was three available out of
16 the terminal in Montgomery. And which he
17 had already named them. And I was
18 telling him, hey, that would be -- you
19 know, the Wetumpka/Elmore route would be
20 great because I live in Elmore County. I
21 know Elmore County, and I just thought
22 that that was just a Godsend, and
23 basically that was -- I didn't push it

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1 any further. There was no need. He was
2 telling us that there were three routes
3 available.

4 Q. Okay.

5 A. Or two, possibly three,
6 because of the other guy in -- with Troy.

7 Q. Did he make any specific
8 reference to any of the other drivers at
9 that time, Derrick Pettaway, for example?

10 A. No, sir.

11 Q. All right. And he said that
12 there are routes available, might be
13 routes available?

14 A. There are.

15 Q. May be routes available?

16 A. No, sir.

17 Q. What was his exact
18 terminology, if you can remember?

19 A. There are three -- two to
20 three routes that are available in the
21 Montgomery terminal.

22 Q. Yes.

23 A. They were not sure about Troy,

1 those routes were going to be available
2 to you if you get through the training?

3 A. It was a definite. I viewed
4 it as a definite.

5 MR. PARKER: Definite what?

6 Q. No, no. I do need an
7 explanation of that terminology. You
8 viewed it as a definite. A definite
9 what?

10 A. Well -- okay. When he was
11 telling us that they are available --

12 Q. Yeah.

13 A. -- there's two available,
14 possibly three that are available.

15 Q. Yes.

16 A. But you've got to meet this
17 certain criteria. I knew that I could
18 meet the criteria.

19 Q. Right.

20 A. It was just up to knowing
21 which one I would accept.

22 Q. Did you feel that if those
23 routes changed or, you know,

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1 but they knew that 36116 and
2 Wetumpka/Elmore, Elmore County, those
3 routes were available.

4 Q. All right.

5 (Off-the-record discussion.)

6 Q. (BY MR. SPOTSWOOD:) And when
7 you say the routes were available, aren't
8 you necessarily talking about these
9 routes would be available in the future
10 if you were successful in completing your
11 screening and your training?

12 A. Everything hinged on being
13 successful. That doesn't mean that the
14 routes were not still available to
15 someone. But I was successful.

16 Q. Right. And did you -- did he
17 tell you whether or not others might wind
18 up with those routes?

19 A. No, sir, it was never
20 mentioned to me.

21 Q. All right. So, are you saying
22 here today that you viewed what Mr. Trott
23 said to you that day as a promise that

1 circumstances were different at the time
2 that you finally had become qualified
3 that it would have been wrong or unfair
4 for those routes not to be given to you?

5 A. Sure. At -- now, state your
6 question again.

7 Q. Yeah.

8 MR. NELMS: Object to the
9 form.

10 Q. Did you feel -- you know, here
11 you go. You go to an informational
12 session. You haven't been to the first
13 leg of training. You have not signed a
14 contract, you have not demonstrated
15 yourself to be qualified to do anything
16 for FedEx, yet, if I'm hearing you
17 correctly, what you're saying is the
18 moment you walk out of that room in your
19 mind you had a contract with FedEx to
20 give you a route?

21 MR. NELMS: Object to the
22 form.

23 A. No.

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1 Q. That's not what you're saying?
2 A. No, that's not what I'm
3 saying.
4 Q. All right.
5 A. I'm saying that if Charlie
6 went through the process, which a
7 contract was never mentioned, I will
8 state that, but if I went through the
9 training that FedEx wanted you to go
10 through, if I jumped through all the
11 hoops that they had aligned, that, of
12 course, I would have a route because
13 there was two, possibly three routes open
14 for a contractor. That is the reason why
15 they had the informational session.
16 Q. Did he tell you that's why he
17 had the informational session?
18 A. Yes.
19 Q. Did he not say that they liked
20 to have people lined up --
21 A. No, sir.
22 Q. -- in the pipeline?
23 A. No, sir. That never ever came

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1 up.
2 Q. Never occurred to you that
3 FedEx would have a desire to have
4 qualified, trained people lined up in the
5 event openings were available?
6 MR. NELMS: Object to the
7 form.
8 A. No, sir. No, sir. It was
9 never put that way. They needed people
10 to go to work, to be contractors.
11 MR. NELMS: Answer his
12 questions.
13 Q. You said a contract was never
14 mentioned, but he was describing a job as
15 an independent contractor, correct?
16 A. Right, yes.
17 Q. And, so, didn't you understand
18 from that that eventually you would have
19 to sign a written contract?
20 A. No, I did not.
21 Q. You didn't understand that?
22 A. No, I did not.
23 MR. NELMS: Object to the

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1 form.
2 MR. SPOTSWOOD: Too late.
3 (Off-the-record discussion.)
4 Q. (BY MR. SPOTSWOOD:) Look with
5 me, if you would, at Defendant's Exhibit
6 L.
7 A. L.
8 MR. NELMS: I think I have L.
9 One second. Let me get it for you.
10 Q. These are the documents, I'll
11 tell you, that were produced by FedEx as
12 a part of its initial disclosures in the
13 case.
14 (Whereupon, Defendant's
15 Exhibit L was marked for
16 identification.)
17 Q. And I want you to flip over
18 with me, if you would, to -- do you see
19 they are numbered at the bottom
20 right-hand -- it says FXG and then
21 numbers on the bottom of the page?
22 A. Yes, sir.
23 Q. I want to look at the

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1 contractor driver information sheet which
2 goes on for a few pages. All right. Is
3 this something that you submitted to
4 FedEx? You might have done it online.
5 I'm not sure exactly how this works.
6 A. Yes.
7 Q. And let's look at the first
8 couple of pages here, 04, 05, 06. Did
9 you fill the information out here that's
10 reflected on those pages?
11 A. Yes, sir.
12 Q. You gave some references. Who
13 is Jeff Owens?
14 A. He's a friend of mine.
15 Q. What does he do?
16 A. As a matter of fact, he's
17 working with UniFirst now, same company
18 I'm with.
19 Q. All right. Mike Proper, what
20 does he do?
21 A. He was a sales manager. I
22 don't know where Mike is. I haven't
23 stayed in contact with him.

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1 Q. Where was he a sales manager
2 at the time that you completed this?
3 A. American General.
4 Q. And Ray Harris, where was he a
5 sales agent?
6 A. American General.
7 Q. Okay. Let's flip over to page
8 07. This is the contractor driver
9 information sheet, and on the left-hand
10 side it says CDAS. Is this another
11 document that you completed yourself?
12 A. Yeah.
13 Q. Did you do it online? Was
14 this something --
15 A. Yes.
16 Q. -- that you sat at the
17 computer and filled out?
18 A. Yes.
19 Q. Where?
20 A. At the terminal.
21 Q. All right. And then over on
22 page ten, that's your signature there,
23 1/14/05, is that correct?

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1 A. Yes, sir.
2 Q. And then the next document I
3 have here is FedEx Ground -- this is the
4 one -- actually I'm not sure where the
5 Bates numbers are on this. Oh, here they
6 are right here. It's on the sticker in
7 the middle of the page FXG 11 and 12, 13.
8 Are these other documents that you
9 completed in connection with the
10 contractor employment process?
11 MR. NELMS: I'm sorry. I
12 didn't understand which pages you were
13 actually referring to.
14 Q. It's 11, 12, 13. Yeah, they
15 are in the middle here. See they are on
16 the little stickies is what they are.
17 MR. NELMS: I don't see that
18 one. Anyway, I'm --
19 A. Oh, I see 11. This must be
20 11. This must be 12.
21 Q. Right.
22 A. Yes, sir.
23 Q. Okay. There's a little sticky

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1 note on the top here, have repeated --
2 have called repeatedly at 615-749-2198.
3 Local number does not give out any
4 information. Is that your handwriting or
5 somebody else's writing?
6 A. No, sir, that is not mine.
7 Q. Do you know whose that is?
8 A. No, sir, I don't.
9 Q. Okay. What this apparently is
10 is a reference questionnaire, and I take
11 it what is going on is you completed the
12 top part, is that right?
13 A. Yes, sir.
14 Q. And then they were trying to
15 get information and they weren't having
16 any luck is what I think is going on
17 here.
18 As it stands, Trott, he was
19 the one helping you through this process?
20 A. No, sir. There was a young
21 lady, and I do not recall her name that
22 got me set up on the computer to do
23 everything --

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1 Q. All right.
2 A. -- that I needed to do.
3 Q. All right. It does look like
4 Stan is the one who was signing the
5 documents down here on the 14th. Is that
6 when you were completing these papers,
7 January the 14th?
8 A. Yes, sir, apparently so.
9 Q. If we flip on back to 18 --
10 A. Okay.
11 Q. -- it says driver's receipt;
12 and it says you're acknowledging the
13 receipt of FedEx motor carrier safety
14 regulations, which I think is --
15 MR. PARKER: They are in a bag
16 behind Andy.
17 A. Yes, sir, that's that little
18 manual or one of them.
19 Q. And is this the book that they
20 gave you? I'm just going to mark that as
21 Exhibit Z.
22 (Whereupon, Defendant's
23 Exhibit Z was marked for

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1 identification.)
2 **A.** Yes, sir.
3 **MR. SPOTSWOOD:** And, Gary,
4 I'll tell you right now I'm not
5 interested in copying the whole book,
6 just the cover page.
7 (Off-the-record discussion.)
8 **Q.** (BY **MR. SPOTSWOOD:**) I'm
9 sorry. You answered that question?
10 **A.** Yes, sir, I did.
11 **Q.** And if you look with me on 19,
12 document number 19, it says at the top
13 Home Delivery Driver Qualification
14 Control Form. That reflects that you
15 were a full QPDL graduate as of
16 apparently 1/21/2005. Had you completed
17 all your training by then?
18 **A.** I don't know what QPDL stands
19 for.
20 **MR. GASTINEAU:** Quality --
21 quality --
22 **Q.** Let him answer.
23 **MR. GASTINEAU:** Pickup and

1 Summary.
2 **A.** Yes, sir.
3 **Q.** Was this form completed by
4 you? Are these your signatures along
5 here?
6 **A.** Yes, sir, these are my
7 signatures.
8 **Q.** And is that Stan Trott's notes
9 on the right or somebody else's, if you
10 know, facilitator's signature line?
11 **A.** I do not recognize it. I
12 would -- I do not recognize the
13 handwriting. I don't know. I can't
14 judge that. I know that that's me here.
15 Right here.
16 **MR. NELMS:** And he points to
17 the left side.
18 **A.** Somebody signed off here. I
19 don't have a clue who that may be.
20 **Q.** And then over here on pages --
21 page 25, we have a -- a Contractor/Driver
22 Safety Instruction Summary.
23 **A.** Yes, sir.

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1 delivery training.
2 **A.** Okay.
3 **MR. GASTINEAU:** But the form
4 was -- that's the day the form was filled
5 out, and that's -- right after that,
6 Charlie went to Birmingham to take the
7 QPDL class.
8 **Q.** Okay. I know we're not
9 supposed to have a round robin here.
10 **MR. NELMS:** I understand.
11 **Q.** But sometimes it's quicker to
12 do that. So, is that what happened,
13 after you filled that form out, you went
14 to Birmingham and took the class?
15 **A.** Well, this is my first time to
16 see this, but I -- yes.
17 **Q.** Okay.
18 **A.** I went to Birmingham.
19 **Q.** All right.
20 (Off-the-record discussion.)
21 **Q.** (BY **MR. SPOTSWOOD:**) I'm
22 looking at page 23, which is the P & D
23 Contractor/Driver Safety Instruction

1 **Q.** And these have various dates
2 on them, 2/3/05, 2/15/05, 1/31/05 and so
3 forth. Looks like the last one is
4 2/3/05, and the facilitator is Omar
5 Newman.
6 **A.** Correct.
7 **Q.** And what exactly did Omar do
8 with you?
9 **A.** We had instructional training
10 -- classroom training.
11 **Q.** And that was up in Birmingham?
12 **A.** Yes, sir, in Birmingham.
13 **Q.** And Omar was running the show
14 up there?
15 **A.** Right. And then we had driver
16 training out in the -- in Birmingham.
17 And then we also had to --
18 **Q.** Who rode around with you in
19 Birmingham?
20 **A.** Well, there was -- there was
21 two other fellows, and Omar.
22 **Q.** Do you remember the others?
23 **A.** No, sir, I don't remember

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1 their names. And then we had -- and
2 there was a young lady that also went
3 with us. Then we had -- had a driving
4 course that we had to drive over,
5 backing, turning, such as that. We had
6 to pass that.

7 **Q.** If we flip over to pages 27
8 and 28, have you ever seen this document
9 before? It's a record of a road test,
10 paren, safety ride, showing the observer
11 as Omar Newman, date of observation,
12 1/31/05?

13 **A.** No, sir, I have not seen this,
14 but I believe this is what he had -- was
15 checking off the day I was driving.

16 **Q.** All right. And then over here
17 on page 35, it looks like we have a order
18 form for business support contractors for
19 uniforms. Is that something that you
20 signed?

21 **A.** Yes, sir, I did sign that.

22 **Q.** All right. If we flip over to
23 pages 36 and 37, this says CRS (sic)

1 It looks like it's dated -- I'm not sure
2 if that's 2/9/05 or 2/4/05, but what
3 is -- what was this?

4 **A.** This was actually observations
5 while I was driving, times that we were
6 in the field and I was driving and
7 delivering.

8 **Q.** Did you complete this, or did
9 Jermaine?

10 **A.** No, sir, Jermaine did.

11 **Q.** All right. What other
12 conversations did you have with Stan
13 Trott regarding whether or when you might
14 be successful in obtaining a contract for
15 a route? You told me about the
16 conversations that happened after the
17 meeting in January. What was the next
18 discussion you had with Stan about --
19 Stan about any route?

20 **A.** The only discussion I had with
21 Stan after the meeting was when I went to
22 the terminal, my wife and I had looked
23 this over, and I had decided that it was

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1 Observation - Critical Safe Driving
2 Behavior. I can't quite make out the
3 signature. Can you tell me who that is?
4 Is that --

5 **A.** Where -- where is the
6 signature?

7 **Q.** On page 37.

8 **A.** 37.

9 **Q.** On the left. That's the
10 signature of the observer.

11 **A.** I remember the young fellow,
12 but I --

13 **MR. PARKER:** Jermaine Wilson,
14 I think, Jermaine.

15 **A.** Yeah, Jermaine.

16 **Q.** Wilson?

17 **A.** Yeah, I know his last name was
18 Wilson.

19 **Q.** Okay.

20 **MR. PARKER:** With a J.

21 **Q.** Flip over, if you would, to
22 pages 39 and 40. This is called a
23 Primary Service Area Analysis Worksheet.

1 something that I would like to pursue, so
2 I went to the terminal, and I met with
3 Stan at that time. And I mentioned the
4 Elmore route, Elmore/Wetumpka route, and
5 he said he didn't have a problem with
6 that, but there were things that we had
7 to go through to get everything started.
8 So, basically that's when he started on
9 all the paperwork.

10 The only other conversation I
11 had with Stan was he was asking me when I
12 was going to training, and after that I
13 don't really recall if Stan was there --
14 still there when I came back from
15 training or not. I don't think Kent was,
16 but I don't know if Stan was either, you
17 know. But I did, you know --

18 **Q.** So, you think you might have
19 had one other conversation with him --

20 **A.** About the --

21 **Q.** -- when you came back to the
22 facility here in Montgomery and completed
23 your initial application paperwork about

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1 a route?

2 **A.** Oh, yes, I met with him the
3 day that I told him that I was very
4 interested --

5 **Q.** Right.

6 **A.** -- to do the paperwork.

7 **Q.** Right.

8 **A.** And I made my request known to
9 him at the time.

10 **Q.** And your --

11 **A.** He said that was -- that would
12 be great. That's all.

13 **Q.** And your request was that when
14 you became qualified you would want to
15 have the route in Elmore County?

16 **A.** Correct.

17 **Q.** And how did you come to know
18 that Stan Trott left or had retired?

19 **A.** He told us at the beginning of
20 the informational meeting that he was
21 going to retire, and that's how I learned
22 -- because I had never met Stan before.

23 **Q.** Okay.

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1 **A.** He said he had three or four
2 months left or something like that.

3 **Q.** Okay. And once Stan was gone
4 from the scene, which from your testimony
5 may have been at least by the time you
6 returned to Montgomery after your
7 training up in Birmingham, did you
8 then -- did your contact then become Kent
9 Gastineau?

10 **A.** No, sir, it was -- actually it
11 was Joe McDonald -- Mc -- what was his
12 name? I can't remember Joe's last name.

13 **MR. GASTINEAU:** McConnell.

14 **A.** McConnell. Right. It was Joe
15 McConnell.

16 **Q.** What was Mr. McConnell's job?

17 **A.** He was the -- from what I
18 understand, he was the terminal manager
19 in Birmingham, and he was also working in
20 Montgomery just back and forth.

21 **Q.** Okay.

22 **A.** I really -- I didn't know that
23 much about him because I was on the move

1 doing things, but that's what I

2 understand his position was until they
3 could get an individual to fill the slot.

4 **Q.** Which was Kent?

5 **A.** Well, my understanding at the
6 time that Kent was coming down to fill
7 in -- or not fill in, but manage home
8 delivery, whereas Stan was managing both.

9 **Q.** And you had expressed interest
10 and were seeking to become qualified as a
11 home delivery contractor, correct?

12 **A.** Yes, sir. Yes.

13 **Q.** All right. Apart from what
14 you've told me, do you recall any other
15 discussions you had with Mr. Trott?

16 **A.** No, sir. I think actually
17 that was the last time I spoke to Stan.

18 **Q.** Okay. Did you ever have any
19 discussions with Mr. McConnell or Mr.
20 Gastineau about a driver in Troy by the
21 name of George McKlinney -- I'm sorry,
22 McKinley, M-C-K-I-N-L-E-Y?

23 **A.** No, sir. In Troy? Was that

1 -- was that your question, Bob?

2 **Q.** Right. He, as I understand
3 it, was a driver from Troy up through
4 December of 2004?

5 **A.** Oh, no, sir.

6 **Q.** You don't recall any
7 discussions with anybody --

8 **A.** No, sir.

9 **Q.** -- with anybody about him?

10 **A.** The only person that I knew
11 that was driving in Troy was a young man
12 by the name of Isaac.

13 **Q.** And that's Isaac Scott?

14 **A.** I never knew his last name.

15 **Q.** Did anyone ever tell you or
16 mention anything to you about the opening
17 in Elmore County being dependent upon
18 perhaps a change in staffing with Mr.
19 Pettaway or a loss of one of his routes?

20 **A.** The only -- the only thing I
21 knew about Pettaway was that he was
22 driving -- he had a route in Millbrook.

23 **Q.** Yes.

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1 A. And that was all I knew that
2 Pettaway had.
3 Q. Millbrook is in Elmore County?
4 A. It's in Elmore County.
5 Q. Right. And all you knew about
6 it was what?
7 A. He had -- he had a route in
8 the Millbrook area that may have went
9 into Autauga County, Prattville, I don't
10 know. But I knew he drove in Millbrook.
11 Q. Okay. What had you been told
12 about the availability specifically in
13 terms of an area, a geographic area about
14 Elmore County, a route being available in
15 Elmore County?
16 A. Basically, it was in the
17 Wetumpka area.
18 Q. And who is talking to you?
19 Who is telling you this?
20 A. Kent.
21 Q. Okay. So, when did Kent come
22 onto the scene?
23 A. I do not recall the -- the

1 one other driver.
2 Q. Do you remember the name of
3 that person? Was it a woman or a man?
4 A. It was a -- it was a -- it was
5 a young man. I do not recall his name.
6 Q. And how many days did you ride
7 with that other driver?
8 A. I don't actually recall the
9 amount of -- the amount of days. I just
10 do not. I'm sorry.
11 Q. Do you think you had more than
12 two weeks total --
13 A. No.
14 Q. -- of --
15 A. No.
16 Q. -- training days?
17 A. Oh, yes, training days, but
18 not with just one individual.
19 Q. All right. How many days --
20 training days do you think you actually
21 rode?
22 A. I can't recall. I can't
23 remember.

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1 dates.
2 Q. Was it in March? Was he in
3 there part-time, full-time?
4 A. I do not recall the date. I
5 do not know. I was too busy.
6 Q. What were you busy doing?
7 A. I was riding with not just
8 this fellow Jermaine. I rode with other
9 drivers. I -- you know, and Kent might
10 have been there. I'm not sure.
11 Q. What were you doing when you
12 were riding with other drivers? Is this
13 more training or --
14 A. It was basically more -- more
15 training.
16 Q. And when you were training
17 with drivers, you were getting paid for
18 that, right?
19 A. Yes.
20 Q. All right. I thought you had
21 told me that -- that you -- who else did
22 you ride with? You said --
23 A. I rode with one -- I rode with

1 Q. 15, less than 15?
2 A. I do not recall, I mean.
3 Q. And where were you actually
4 doing the rides with this other
5 individual?
6 A. In the Montgomery area. I
7 do -- I don't know what zip code.
8 Q. Things that are in a different
9 area from the ones you did with Jermaine?
10 A. It was a different area. The
11 one that I rode with Jermaine was
12 actually El -- Wetumpka and 36116, the
13 ones that were supposedly open. And then
14 one other time Isaac was sick, and I ran
15 his route in Troy.
16 Q. And did you do that by
17 yourself, when you ran Isaac's route?
18 A. There was -- yeah, there was
19 days that I went by myself, and there was
20 days that Jermaine actually went with me.
21 For what reason -- I don't know for what
22 reason.
23 Q. And what -- how many times did

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1 you fill in for Isaac down in the --

2 **A.** Just one -- one time.

3 **Q.** -- Troy?

4 **A.** Yes, in Troy.

5 MR. NELMS: I don't understand
6 something. You said that you went to
7 Troy to cover the route, and sometimes
8 Isaac went with you.

9 **A.** No, not Isaac. Jermaine.

10 MR. NELMS: Jermaine went with
11 you. I'm sorry.

12 **A.** Yes, the customer service guy
13 that was over this.

14 **Q.** Completing your paperwork --

15 **A.** Yes.

16 **Q.** -- and your training program?

17 **A.** Yes.

18 MR. NELMS: But you only
19 covered that Troy route once.

20 **A.** Right, while Isaac was out
21 sick with the flu or whatever.

22 MR. NELMS: And you went by
23 yourself.

1 route.

2 **Q.** Did you at any point in
3 time -- did at any point in time Kent ask
4 you if you were interested in the route
5 and you initially told him, no, you
6 weren't, the route in Troy?

7 **A.** I never told him that I was
8 not interested in the route, but
9 preferably I was interested in close to
10 home, the Elmore County/Wetumpka route,
11 because I had --

12 **Q.** But didn't he at some point in
13 time ask you if you were interested in
14 taking the Troy route and you declined,
15 said you really weren't interested in it?

16 **A.** No, sir, because I inquired
17 through -- through Dodge Vans about
18 buying a Sprinter van to run that route.
19 And they sent me brochures.

20 **Q.** Isn't that because you changed
21 your mind a week or two later and came
22 back and said you might be willing to
23 consider it?

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1 **A.** Yeah, when I say Troy, Pike
2 County basically. I mean, it was a very
3 rural -- rural -- rural route, so.

4 **Q.** What was your understanding of
5 Mr. Scott's status when you were working
6 towards obtaining a driver's position in
7 February and March and April?

8 **A.** Who was Mr. -- who is Scott?

9 **Q.** Who you have been calling
10 Isaac.

11 **A.** Oh, Isaac, what his position
12 was.

13 **Q.** Was he working as a temp
14 driver trying to get on as a -- as a
15 contractor, or do you know?

16 **A.** I don't know what his status
17 was. All I know is that from what I knew
18 from Kent and talking to Isaac that that
19 route had been offered to him, and he was
20 in the feeling it out to see if he wanted
21 to accept it. And Kent could never
22 actually pin him down, and I even made
23 reference to Kent. Kent, I'll take the

1 **A.** I was willing to take whatever
2 route they was willing to give me.

3 **Q.** You weren't being picky in
4 March?

5 **A.** Picky?

6 **Q.** Yes.

7 **A.** No.

8 **Q.** You didn't tell him at one
9 point in time that you were not
10 interested in Troy?

11 **A.** I told Kent that I was
12 interested in Wetumpka, if I had a choice
13 in the matter, but if I did not have a
14 choice in the matter, I would take the
15 Troy route. If I was not interested in
16 it, I would have never inquired about a
17 van and talked to Chad Primus about even
18 financing a van.

19 **Q.** People change their minds
20 every day.

21 **A.** Sure, sure, sure.

22 **Q.** You didn't go through a change
23 of heart on this?

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1 A. No, I -- I left it open as an
2 option.

3 Q. And I guess you've already
4 said that Mr. Scott had been working for
5 a period of weeks, I take it, as a
6 temporary driver down there --

7 MR. NELMS: Object to the
8 form.

9 Q. -- in Troy. Was that -- was
10 that your understanding of what he was
11 doing?

12 A. I have no idea. All I know is
13 Isaac was running the route. I don't
14 know if he was a temp -- I don't know if
15 he -- I don't even know what -- I know
16 nothing about Isaac except he got in that
17 van every day and he headed toward Troy.

18 Q. Okay.

19 A. If he had been through the
20 training process or not, I don't know.

21 Q. Okay.

22 A. I do not know.

23 Q. Do you recall having a

1 A. It was already open in Elmore
2 County. Kent didn't want Pettaway to get
3 the Wetumpka route because Pettaway was a
4 problem. He didn't keep his records on
5 his truck. He was just a problem all the
6 way around.

7 Q. What other kind of problems
8 other than records?

9 A. I don't know. All I know is
10 maintenance on the truck and such as
11 that. I mean, I can't recall every --
12 every conversation we had, but he did not
13 want him to get that route. And he
14 suggested that I go and get my map book.
15 Why would I go to the --

16 MR. NELMS: Just answer his
17 questions.

18 A. Okay.

19 Q. And how was it that Mr.
20 Pettaway was going to get this route?

21 A. I don't know.

22 Q. Was he going to be able to
23 expand his core territory or something

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1 conversation with Kent where he explained
2 to you why he had given the Troy route to
3 Isaac?

4 A. No, Isaac was already on that
5 route when I came back from Birmingham
6 training.

7 Q. I mean, giving him a -- giving
8 him a contractor position on that route,
9 not just driving it, but as a contractor?

10 A. The only thing I know from
11 Kent concerning Isaac is that Kent could
12 not pin the boy down and that he relayed
13 to me that he was having problems getting
14 financing on a van. And when he would go
15 to him and say Isaac, what are your
16 plans, what are your plans, are you going
17 to take this route, he never would give
18 him an answer. That's all I know.

19 Q. Did Mr. Gastineau ever talk to
20 you about the possibility that something
21 might open up in Elmore County depending
22 upon, you know, how things played out
23 with Mr. Pettaway?

1 along those lines?

2 MR. NELMS: Object to the
3 form.

4 Q. Did you have any understanding
5 of that?

6 MR. NELMS: Object to the
7 form.

8 A. I don't know. I don't know
9 the procedure for getting an extra route.

10 Q. Now, you said that you
11 understood that there was a route open
12 over there in Elmore County. Who told
13 you that?

14 A. Stan Trott.

15 Q. I'm talking about in your
16 conversations with -- is it -- did Kent
17 tell you that?

18 A. Stan Trott told me that it was
19 open in the beginning.

20 Q. Right.

21 A. And it was just the same way
22 with Kent. That was open.

23 Elmore/Wetumpka, that area was open,

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1 36116 was open.

2 Q. You keep referring to 36116.

3 A. That's in Montgomery. That's
4 a Montgomery route.

5 Q. And who was working that
6 route?

7 A. My understanding, nobody. It
8 was just being filled in.

9 Q. Temporary drivers were working
10 it?

11 A. From what I understand, there
12 was ground drivers doing home delivery
13 service out there.

14 Q. Okay.

15 A. So, I mean, I didn't know all
16 the ins and outs, you know. I took them
17 for what -- their word.

18 Q. Well, that's what I'm trying
19 to understand, precisely what it is that
20 Kent told you was the situation in Elmore
21 County, which is apparently what you said
22 you were really interested in.

23 A. He told me that the Wetumpka

1 Q. Yeah.

2 A. The only discussions that we
3 had was that I was available for either,
4 and Isaac was still on the board. We
5 didn't discuss that one that much because
6 we knew what I was leaning toward. So,
7 we discussed the Wetumpka route more than
8 anything. We even went on the computer,
9 and he pulled it up on the computer and
10 showed me an outline of the territory
11 there, where it went, into what -- next
12 to what county, you know, it bumped up
13 against and everything.

14 Q. Did you doubt that he was
15 trying to do what he could to give you a
16 hand and get you into that route?

17 A. I never doubted Kent for one
18 moment. I thought the man was telling me
19 the truth. I mean, I was excited about
20 it.

21 Q. Okay.

22 MR. NELMS: Can we take a
23 minute?

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1 route in Elmore County was open, that I
2 needed to go to and purchase my map book.
3 I went and purchased my map book.

4 Q. And that cost you how much
5 money?

6 A. That was \$25.

7 Q. Yes.

8 A. He showed me actually a map
9 book, what it looked like, and how it was
10 gridded out from the 911 people. I went
11 directly up there. I purchased it for
12 \$25.

13 Q. And you got that from the
14 police department?

15 A. It was not in the police
16 department. It was emergency management
17 office.

18 Q. What discussions did you have
19 with Kent Gastineau about the route in
20 Montgomery that you described just a
21 moment ago?

22 A. We didn't have --

23 MR. NELMS: 36116?

1 MR. SPOTSWOOD: Yeah, sure.
2 (Said deposition was in recess
3 at 2:42 p.m. until 2:50 p.m.,
4 after which the following
5 occurred:)

6 Q. (BY MR. SPOTSWOOD:) Your
7 complaint says that Kent Gastineau met
8 with you on April the 19th of 2005,
9 quote, to sign the contract for Elmore
10 County, and that Mr. Gastineau said --
11 stated, and I'm quoting from the
12 complaint, quote, stated that there was a
13 paperwork problem but that the route
14 belonged, close quote, to you. Is that
15 what he said to you?

16 A. Yes, sir.

17 Q. And you remember that
18 specifically?

19 A. Yes, sir, I do.

20 Q. What was the paperwork
21 problem?

22 A. I don't have a clue what the
23 paperwork -- there were so many paperwork

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1 problems, that was one of the main
2 issues, what -- why is there so many
3 paperwork problems? I was always
4 addressing that, always, why --

5 Q. Well, try to focus on my
6 question here. This is apparently an
7 important meeting. You've quoted it in
8 the complaint, April 19th. You said
9 there was a paperwork problem, but the
10 route belonged to you. What specifically
11 did he tell you -- I can see that you
12 were upset about that. What did he tell
13 you?

14 A. Basically it was out of his
15 hands, and it had went up the chain of
16 command, and several people had to sign
17 off on that, and it was up the chain.

18 Q. Okay. Did he give you any
19 specific explanation for what might have
20 happened or --

21 A. No, sir, he did not.

22 Q. All right. Did he give you
23 any assurances or say anything to you

1 Exhibit V?

2 A. No, sir, I do not. My
3 understanding was all my documents -- I
4 don't even know what I was supposed to be
5 signing off on that day, but I do know
6 that my other documents were actually in
7 other people's hands to be signed off on
8 because I know that there was a
9 procedure. Omar stated that to me. And
10 he pulled it up on his file saying
11 Charlie will sign off here, here, here
12 and here. I'm just going by what they
13 tell me.

14 Q. The complaint says that Mr.
15 Gastineau gave you, quote, an official
16 route book. Is that the book you went
17 off and -- what are you talking about
18 there, the book -- what's the official
19 route book?

20 A. I have no idea what the
21 official route book, what that's
22 pertaining to.

23 Q. Okay. Well, it's your

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1 about his hope to get it worked out in
2 the future?

3 A. No, he never used that
4 terminology.

5 Q. What did he say to calm your
6 nerves, if anything?

7 A. It was just a time, time
8 factor, being on someone's desk. Omar
9 Newman's desk had to sign off on it, and
10 there were some other individuals that
11 had to sign off on it, and they just --
12 just in passing had not signed off on it.

13 Q. On April the 19th, did he sit
14 down at the computer and attempt to print
15 off a contract for you, do you know?

16 A. No, there was a time on the
17 computer that we were trying to get some
18 type of document, and we couldn't access
19 it through the computer.

20 Q. Do you know whether or not
21 that document was, in fact --

22 A. No, I do not.

23 Q. -- the contract that's here in

1 complaint. I know you didn't write it.

2 A. Maybe it was the map book.

3 Q. Is that what you think you're
4 thinking about as the official route
5 book, perhaps?

6 A. Possible.

7 Q. Okay. The complaint says and
8 at this time you were, quote, encouraged
9 to continue working toward preparing for
10 the time when he would work the Elmore
11 County route. That's a quote out of your
12 complaint. Is that what he said to you?

13 MR. NELMS: That's terrible
14 language. Whoever wrote that needs to --

15 Q. Did he give you some words of
16 encouragement to hang in there for a
17 while?

18 A. Sure. He did. Exactly -- he
19 surely did, I mean. And it may have been
20 coming to him down the chain. It was all
21 a paperwork issue. From Jeff White on
22 up.

23 Q. You -- I think your van might

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1 have arrived or did arrive on the
2 premises on May the 3rd, does that sound
3 right to you?

4 A. It's possible. I don't really
5 recall the exact date.

6 Q. Whatever date the van arrived,
7 did Mr. Gastineau attempt to print out a
8 contract for you to sign in the form
9 contained in the book here, Exhibit V?

10 A. I do not recall that.

11 Q. Did he tell you the day that
12 your van arrived, though, that the
13 computer system would not give him
14 approval for a contract and a route?

15 A. No, sir.

16 Q. He didn't tell you that?

17 A. No, sir.

18 Q. What did he tell you that day?

19 A. He called me and told me the
20 van had arrived.

21 Q. Yes.

22 A. I went to the terminal. He
23 went out and done the maintenance check

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1 on the van, checked it over. I told him
2 I was taking it home, I was going to have
3 a radio installed, wash it, be ready to
4 go. He gave me a start date.

5 Q. What was the start date?

6 A. It was the Tuesday after
7 Mother's Day.

8 Q. Tuesday after Mother's Day?

9 A. I don't recall the date.

10 Q. But as of May the 3rd, you had
11 no hint there was going to be any problem
12 or that there was a problem at that time?

13 A. Paperwork problem.

14 Q. You did know on the 3rd when
15 the van arrived there was still paperwork
16 problems, correct?

17 A. No. No.

18 Q. You didn't?

19 A. I did not. Because I knew
20 that I had not -- the van had been
21 issued, and the issuance of the van would
22 not have taken place if there was a
23 paperwork problem.

1 Q. Okay. And who told you that?

2 A. I knew that FedEx would not
3 issue a van with a contractor ID number,
4 DOT number, unless the chain of command
5 at FedEx had not signed off on
6 everything. Chad Primus at Stearns Bank,
7 which he had been doing this for years,
8 and I knew that that's what it would
9 take.

10 Q. Because Chad told you that or
11 somebody else did?

12 A. No, I knew that. I mean, I
13 just knew that through Kent probably, I
14 knew that they would not issue -- why
15 would a company issue you a van unless
16 everything was A-okay?

17 Q. I would suspect that would be
18 an error, yes, sir.

19 A. Okay.

20 Q. Let's talk about the van
21 purchase. I need the documents
22 reflecting the purchase and sale of the
23 van. Where are those documents? I don't

1 know that we've ever seen any documents
2 dealing with the sale of the van.

3 MR. SPOTSWOOD: That's
4 correct. Those are exhibits --

5 MR. SPOTSWOOD: Hang on. Let
6 me just go off the record here for a
7 second.

8 (Off-the-record discussion.)

9 Q. (BY MR. SPOTSWOOD:) Pull
10 Exhibit H out for us, if you would, Andy.
11 (Whereupon, Defendant's
12 Exhibit H was marked for
13 identification.)

14 Q. Let's look at the second page
15 of Defendant's Exhibit H, which is the --
16 appears to be a conditional sales
17 contract with Stearns Bank. Is that your
18 signature on the bottom of the pages, on
19 the first two pages of that three-page
20 contract?

21 A. Yes, sir, it is.

22 Q. And, then, we have your
23 signature -- those are your initials on

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1 your first two. Then we have your
2 signature on the last page, is that
3 right?
4 **A.** Yes, sir.
5 **Q.** How much money did you sell
6 the -- first let me stop and ask this
7 question of counsel.
8 **MR. SPOTSWOOD:** To this day I
9 have not seen any documents dealing with
10 the sale of the van.
11 **MR. NELMS:** Do you have any
12 documents dealing with the sale of the
13 van we don't have?
14 **A.** No, sir, other than in that
15 packet.
16 **Q.** (BY MR. SPOTSWOOD:) Let me
17 ask you a question. Did you do any
18 paperwork in connection with the sale of
19 the van?
20 **A.** Sure, Chad Primus, he worked
21 everything up and sent me the paperwork
22 to sign off on it, and I signed it back
23 to him.

1 **A.** Tag, no, sir.
2 **Q.** -- or tag or any of that?
3 **A.** I did not.
4 **Q.** And what happened -- what
5 happened to the radio, did he purchase
6 the radio?
7 **A.** He purchased the radio.
8 **Q.** He did purchase the radio?
9 **A.** Yes, sir. The day he picked
10 it up he purchased the radio and --
11 **Q.** Did he pay you what you had
12 paid for the radio?
13 **A.** Yes, sir, he did. Him and --
14 I don't remember the fellow's name, but
15 him and his -- Tony DeRosa, Tony brought
16 him down to the home, and they picked it
17 up.
18 **Q.** Tony was the manager up there
19 in Anniston?
20 **A.** Anniston, yes.
21 **Q.** Do you remember the guy's name
22 who bought it?
23 **A.** No, sir, I do not remember.

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1 **Q.** Did you keep a copy of that?
2 **A.** All the copies I had, I gave
3 to them, to Andy. I'm pretty sure that I
4 did.
5 **MR. NELMS:** Now, I've -- let's
6 go off the record.
7 (Off-the-record discussion.)
8 **Q.** (BY MR. SPOTSWOOD:) Let me
9 ask you this, Mr. Thornton. I know we
10 don't have apparently the documents
11 reflecting the sale of the van. Do you
12 recall, as we sit here today, what the
13 terms of the sale were?
14 **A.** My terms?
15 **Q.** Yeah, what -- what did -- what
16 did --
17 **A.** He assumed payments on it. He
18 just assumed the van, the payments on the
19 van.
20 **Q.** Okay. So, you didn't get
21 any cash back from -- that you had
22 fronted for the down payment or title
23 or --

1 (Off-the-record discussion.)
2 (Whereupon, Defendant's
3 Exhibit AA was marked for
4 identification.)
5 **Q.** (BY MR. SPOTSWOOD:) Mr.
6 Thornton, is this -- you tell me what
7 this is.
8 **A.** Okay. This was the down
9 payment on the truck.
10 **Q.** What are we looking at there?
11 Did you charge that to a credit card?
12 **A.** Yes, sir, I did.
13 **Q.** What credit card did you
14 charge it to?
15 **A.** It was my Visa, National Bank
16 of Omaha.
17 **Q.** All right. And the amount of
18 the down payment on the van was the
19 1,029.50?
20 **A.** Yes, sir.
21 **Q.** And that was a postdate of
22 April the 22nd, correct?
23 **A.** Correct.

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1 Q. And that's -- we've been
2 talking about Exhibit AA, I believe.
3 (Whereupon, Defendant's
4 Exhibit BB was marked for
5 identification.)
6 Q. I'm now going to ask you to
7 identify Exhibit BB.
8 A. This is actually a renewal
9 notice that I received not too awfully
10 long -- well, received 10/3/05 on the --
11 on the tag of the van.
12 Q. So, this is not something that
13 you had actually paid then, I take it?
14 A. No, sir, I did not pay it. I
15 just put it in there.
16 (Whereupon, Defendant's
17 Exhibit CC was marked for
18 identification.)
19 Q. Exhibit CC, is this the sales
20 receipt for the --
21 A. Radio.
22 Q. -- radio?
23 A. Right.

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1 Q. Is that correct?
2 A. Yes, sir.
3 Q. And the buyer whose name we
4 haven't figured out quite yet reimbursed
5 you in total for the three thirty-five oh
6 four?
7 A. Yes, sir.
8 (Whereupon, Defendant's
9 Exhibit DD was marked for
10 identification.)
11 Q. I'm going to show you
12 Defendant's Exhibit DD. This is the
13 registration certificate, is it not, for
14 the van?
15 A. Yes, sir.
16 Q. And it reflects a total tag
17 and tax payment and title fee of
18 \$1,533.35?
19 A. That's correct.
20 Q. And now, did you get any kind
21 of a refund for any of this amount?
22 A. No, sir.
23 Q. Was this -- frankly, I'm not

1 sure that I understand how this works.
2 You obviously paid upon the purchase
3 state tax, county tax, city tax, total
4 sales tax of \$1,351.88, correct?
5 A. Yes, sir.
6 Q. And you got no reimbursement
7 at all from the transaction with the
8 new --
9 A. None, no, sir.
10 Q. So, this was an out-of-pocket
11 expense for you?
12 A. Yes, sir.
13 Q. All right. I am marking this
14 back of this receipt as Defendant's
15 Exhibit EE.
16 (Whereupon, Defendant's
17 Exhibit EE was marked for
18 identification.)
19 Q. It is a receipt from Harbor
20 Freight Tools, listing a hand truck and a
21 lashing, ST. I'm not sure what that
22 means. What are these items?
23 A. It's a hand truck that I

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1 purchased for the truck to use on the
2 truck for delivery.
3 Q. And the lashing, what was
4 that?
5 A. That was just to strap it into
6 the truck where it wouldn't be moving
7 around.
8 Q. Was this an out-of-pocket
9 expense that you had, \$29.68?
10 A. Yes, sir.
11 Q. Okay. I'm not going to mark
12 this. I'm seeing a receipt here. You
13 apparently paid on your credit card for
14 the tag amount of 153335.
15 A. Let's see if that was a credit
16 card or a debit. Yeah, it was credit.
17 It was credit.
18 Q. All right.
19 MR. NELMS: Can we staple that
20 to the --
21 MR. SPOTSWOOD: Yeah, that's
22 fine.
23 MR. NELMS: That way --

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1 MR. SPOTSWOOD: We'll just
2 make that a part of Exhibit DD.
3 MR. NELMS: Does that read
4 okay with you?
5 COURT REPORTER: Yes.
6 (Off-the-record discussion.)
7 (Whereupon, Defendant's
8 Exhibit FF was marked for
9 identification.)
10 Q. (BY MR. SPOTSWOOD:) I've
11 marked this one Exhibit FF, which are
12 documents that we received from you
13 today, and it is a variety of different
14 documents. I just want to walk through
15 them with you if I can. The first page
16 is a bill of sale from FedEx Ground to
17 you for the Workhouse, correct?
18 A. Yes, sir.
19 Q. And it shows the selling price
20 of \$33,797, correct?
21 A. Correct.
22 Q. All right. The next page is
23 an insurance identification card that

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1 shows insurance on the vehicle effective
2 4/16/05 and expiring 2/1/06, correct?
3 A. Correct.
4 Q. I take it you did cancel the
5 policy immediately when you sold the van
6 to the -- whoever it was you sold it to?
7 A. Yes, I contacted them and let
8 them know. They still sent me a notice,
9 though.
10 Q. Did you ever pay any insurance
11 premiums on it?
12 A. No, not after -- not after
13 that.
14 Q. I guess my question in part
15 is, did you pay any premiums ever for
16 insurance? They might have billed you
17 after the fact, in which case maybe you
18 didn't pay the bill. I just don't know.
19 That's what I'm asking.
20 A. I can't recall. I really
21 can't recall. I had to pay something to
22 get the insurance.
23 Q. And this is a Protective

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1 Insurance Company additional insured
2 endorsement that names FedEx Ground as
3 named insured and additional insured,
4 Charlie Thornton, correct?
5 A. Correct.
6 Q. The cover page of the
7 insurance?
8 A. Correct.
9 Q. Correspondence is the next
10 page from Protective to you regarding --
11 basically providing proof of coverage.
12 The next document is a
13 Department of Revenue permit basically
14 for operation of the vehicle before the
15 title comes through, correct?
16 A. Yes, sir.
17 Q. The next document is just an
18 envelope from Protective. All right.
19 Correct?
20 A. Yes, sir.
21 (Whereupon, Defendant's
22 Exhibit GG was marked for
23 identification.)

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1 Q. Mr. Thornton, I'm showing you
2 Defendant's Exhibit GG, which I believe
3 is an application for the insurance
4 coverage that you purchased which
5 consisted of a life insurance policy as
6 well as a disability insurance policy.
7 A. Right.
8 Q. Life insurance paying off
9 almost \$51,830, and then the disability
10 coverage providing you 750 -- \$730 a
11 month in disability benefits, correct?
12 A. Correct.
13 (Whereupon, Defendant's
14 Exhibit HH was marked for
15 identification.)
16 Q. What I've got marked as
17 Exhibit HH is a cover page from
18 Protective Insurance, a certificate of
19 group independent contractor work
20 accident insurance effective 4/26/05, and
21 then the actual policy group independent
22 contractor work accident insurance
23 certificate, which is several pages. Is

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1 this all material that you received
2 from --
3 **A.** Yes, sir.
4 **Q.** -- Protective in connection
5 with your vehicle?
6 (Whereupon, Defendant's
7 Exhibit II was marked for
8 identification.)
9 **Q.** Let me show you Exhibit II.
10 Is this a letter you received from Chad
11 Primus, the account manager at Stearns,
12 dated April 15th?
13 **A.** Yes, sir.
14 **Q.** It appears to ask you to
15 return various documents and execute them
16 along with a check payable to Stearns for
17 \$967.50?
18 **A.** That's correct.
19 **Q.** And that includes an advance
20 payment of \$668?
21 **A.** Correct.
22 **Q.** And documentation fee of
23 \$299.50?

1 payments, insurance and taxes?
2 **A.** Yes, sir.
3 **Q.** And it advises you that your
4 next payment is due 5/25/05?
5 **A.** Correct.
6 **Q.** And I think these documents
7 that we've just been through were mailed
8 in this envelope, if I'm not mistaken.
9 Do you know?
10 **A.** Yeah, flip that up and you can
11 tell what.
12 **Q.** Okay. So, these --
13 **A.** Yeah, those are.
14 (Whereupon, Defendant's
15 Exhibit KK was marked for
16 identification.)
17 **Q.** The insurance documents came
18 in this envelope --
19 **A.** Correct.
20 **Q.** -- is that correct? And
21 that's Exhibit KK. And that's got a
22 postmark of May 2nd on it, correct?
23 **A.** Yes.

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1 **A.** That's correct.
2 **Q.** Now, is that -- is that the
3 out-of-pocket costs you incurred in
4 connection with this van separate from --
5 **A.** Yes.
6 **Q.** -- any insurance-related
7 issues?
8 **A.** Yes, sir.
9 **Q.** Okay. And you paid that money
10 by, I take it, a check?
11 **A.** No, that was with a credit
12 card.
13 **Q.** Was it?
14 (Whereupon, Defendant's
15 Exhibit JJ was marked for
16 identification.)
17 **Q.** All right. And Exhibit JJ is
18 a letter from you dated May 6th -- I'm
19 sorry, from Stearns Bank, the customer
20 service department, to you dated May 6th,
21 2005?
22 **A.** Yes, sir.
23 **Q.** And that tells you about

1 **Q.** I'm not going to mark that.
2 (Whereupon, Defendant's
3 Exhibit LL was marked for
4 identification.)
5 **Q.** Exhibit LL is your money
6 receipt for the map book you described in
7 the amount of \$25?
8 **A.** That's correct.
9 **Q.** I haven't been keeping up with
10 the numbers here, but do you know what
11 this Regions receipt relates to? It's in
12 the amount of 1351.88?
13 **A.** I don't. I can find that out,
14 though.
15 **Q.** Okay. If you could find
16 out --
17 **A.** I know it has something
18 pertaining to something, or it wouldn't
19 be in there. I don't know.
20 **Q.** If you can figure that out and
21 let me know in the morning, that would be
22 good.
23 (Off-the-record discussion.)

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1 (Whereupon, Defendant's
2 Exhibit MM was marked for
3 identification.)
4 **Q.** (BY MR. SPOTSWOOD:) I'll show
5 you Defendant's Exhibit MM which is a
6 two-page handwritten note here. Can you
7 tell me what this reflects?
8 **A.** (Examining document.) It's
9 just an itemized statement of expenses
10 going to training.
11 **Q.** Were you reimbursed by FedEx
12 for those expenses?
13 **A.** No, sir.
14 **Q.** What do they consist of?
15 **A.** Oil, gas, lunch, gas, shoes I
16 bought.
17 **Q.** So, you were basically keeping
18 those for tax purposes to keep up with
19 your expenses in connection with --
20 **A.** I really don't know how -- I
21 know my wife wrote this out because
22 actually this is showing an automatic
23 deposit of where they paid me right here.

1 know -- which appears to be the address
2 to which the payments should be sent?
3 **A.** Correct.
4 **Q.** So, these three documents
5 consisted of your communication -- your
6 written communication with Kent?
7 **A.** Right. I mailed it to his
8 home.
9 **Q.** All right. Did you mean what
10 you said here in this letter?
11 **A.** I surely did. That was our
12 conversation.
13 **Q.** Did he ask you when -- when he
14 had indicated that he would take care of
15 making the payment that was due on the
16 25th, did he ask you not to tell anybody
17 about that because he might get into some
18 trouble about it?
19 **A.** Yes, sir.
20 **Q.** Did he explain to you why he
21 might get into some trouble about it?
22 **A.** No, he did not explain it. He
23 just wanted it to be between us.

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1 That's a deposit. I was -- that's an
2 auto -- automatic deposit there.
3 **Q.** I see.
4 **A.** There's no amounts there, so I
5 don't know what -- the only thing it's
6 showing that I -- I don't know why she
7 just put something there, the 5878, and
8 this is just scribble on the back.
9 **Q.** All right. On the 19th of May
10 you wrote Kent a letter, correct?
11 **A.** That's correct.
12 **Q.** And is that letter shown on
13 the second page of Defendant's Exhibit M?
14 **A.** That's correct.
15 (Whereupon, Defendant's
16 Exhibit M was marked for
17 identification.)
18 **Q.** And you enclose with that
19 letter the first page of Exhibit M?
20 **A.** That's correct.
21 **Q.** Was the -- did you also
22 enclose with the letter the document
23 that's marked KG 003 so that he would

1 **Q.** Did you keep it between the
2 two of you?
3 **A.** No, I did not.
4 **Q.** Who did you tell about it?
5 **A.** I told Jeff White.
6 **Q.** And who is Jeff White?
7 **A.** He's either an engineer or
8 Kent's boss.
9 **Q.** What did you say to Jeff about
10 it, or is that in that record -- one of
11 those recorded conversations?
12 **A.** It -- it may possibly be. I'm
13 not quite for sure. There's only one.
14 **Q.** I don't think you reached Jeff
15 that day.
16 **A.** Well, I spoke to Jeff about
17 it. I know I did. My main concern was
18 how that payment was going to be made,
19 and it wasn't being made, and I wanted to
20 know -- I'm a chain of command guy. I
21 mean, I'm going to go to him and then I'm
22 going -- if I can't get answers, go
23 above. And, so, I called Jeff.

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1 Q. Well, did -- when you called
2 Jeff, did you think that Kent was not
3 going to make good on his promise to make
4 the payment?

5 A. I wasn't sure if he was or not
6 because it was a situation that was not a
7 very nice situation for either party, and
8 I had already been appeased to the point
9 of it was ludicrous, and I just said I'm
10 not sure, but I knew somebody was going
11 to come after Charlie for the payment.

12 Q. So, what do you remember
13 saying to Jeff about the payment?

14 A. I really don't recall the --
15 the whole conversation. I mentioned it
16 to Jeff that my main concern was what is
17 going on with my paperwork, and I had a
18 payment due in X amount of weeks. And
19 someone was going to make that payment,
20 and I told him at the time that Kent --
21 Kent said that he would make the payment.

22 Q. And did it later turn out that
23 FedEx made that first payment?

1 maybe earlier than that, possibly the
2 18th. But your testimony today is that
3 you did talk to Jeff about this issue
4 after you wrote this letter to Charlie,
5 so I need some clarification there. Do
6 you think you might have told Jeff about
7 the commitment that Kent had made before
8 you actually wrote the letter to Kent?

9 A. I don't recall. I really
10 don't recall.

11 Q. Could it have been, though,
12 before you actually wrote the letter?

13 A. It's possible. It's possible.

14 Q. I tell you what I'd like to
15 do, I think, is take a break at this
16 juncture because I really need to spend
17 some time looking at this document, I
18 think.

19 MR. NELMS: Or we can just
20 start over in the morning, whatever you
21 want to do.

22 MR. SPOTSWOOD: Yeah, I mean,
23 it suits me to start in the morning if I

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1 A. I don't know who made the
2 payment, if anybody made the payment.
3 All I know is that Chad was able to find
4 somebody.

5 Q. And since that some person
6 just took over the payments, you're not
7 really sure how good a deal he got,
8 whether he got one payment better deal
9 than might otherwise be the case?

10 A. Well, I remember the
11 conversation with Chad, and it may be in
12 here.

13 Q. I think it is.

14 A. I don't remember the whole
15 conversation. The guy got a good deal.
16 I think he got a good deal anyway. But
17 Chad really helped me out with that
18 truck.

19 Q. Previously you had indicated
20 that you started recording conversations
21 with everyone you talked to at FedEx
22 beginning with the first conversation on
23 here, which we know is at least the 19th,

1 could take this with me. I'd actually
2 rather not take it with me, so let me see
3 if we can shoot a picture of this.

4 MR. NELMS: Yeah, give it here
5 and let me just get them to copy that off
6 real quick.

7 MR. SPOTSWOOD: Copy the
8 cover, too, if you don't mind.

9 MR. NELMS: Before y'all go
10 out tonight, let's make sure we have
11 everything in order.

12 MR. SPOTSWOOD: Sure,
13 absolutely.

14 (Whereupon, Defendant's
15 Exhibit NN was marked for
16 identification.)

17 (Said deposition was in recess
18 at 3:34 p.m. until 9:30 a.m.
19 on the morning of March 16th,
20 2006. All subsequent
21 testimony of Mr. Thornton is
22 contained in Volume II of his
23 Deposition.)

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